

FAST PROCESS AGREEMENT

A fast process agreement has three applications for utility relocation work. Project related, where a minor utility relocation is necessary to accommodate a construction project. Non-project related, where a minor utility relocation is contemplated for safety considerations, where there is no active construction project. Project related utility excavations, where it is necessary to obtain actual elevations or depths to design around existing utilities, or determine the extent of conflict with a construction project.

The agreement estimate prepared by the utility company and the approval process is structured to require a minimal amount of time to prepare and approve. The utility company must prepare the lump sum, actual cost or unit cost estimate. The estimate face sheet will serve as the Department approval format, the work completion certification and the final bill. The use of a unit cost estimate will be utilized.

Requirements for fast process:

- 1) Fast process agreements shall not exceed \$50,000.00 State cost share of the proposed utility relocation.
- 2) Utility Work Orders are initiated by the District before or during the utility relocation activities and must be initiated when the cost will exceed 15% of State's share of the agreement cost with the cost justification supplied by the Utility Company. In rare cases, and providing Unit Costs were utilized, the costs may exceed the \$50,000.00. If the cost will exceed the \$50,000.00 limitation, a Work Order will be required by District with the cost justification supplied by the Utility Company or District.
- 3) Fast process agreements shall be Lump Sum, Actual Cost or Unit Cost agreements only.
- 4) Final bills should be submitted by the District to the Utility Section for payment no later than 60 days after the work is completed.
- 5) Fast process agreements may only be used to relocate Public Utilities. Privately owned facilities cannot be relocated by fast process agreements.

FAST PROCESS AGREEMENTS PROJECT RELATED

Fast process agreements project related should be used for minor utility relocations on active construction projects. Utility companies should be encouraged to use the Lump Sum fast process agreements where the work can be well defined and is under \$50,000.00 State share.

Only one fast process agreement should be written for one utility company per project. If there are a number of minor conflicts throughout a project for the same utility company, the total of which exceeds \$50,000.00 State share, the standard agreement format should be initiated.

The fast process agreement can be initiated either by the District or by the Helena Utility Section. To save time, the District, in most cases, should initiate and process fast process agreements. Fast process agreements should be signed by the District Administrator when initiated by the District.

PROCEDURES FOR APPROVAL

1. Field review the proposed adjustment with the utility company.
2. The utility company must furnish two original agreements with the following information:
 - a. An exhibit of the work, including the existing and new locations of the utility facility.
 - b. Two completed estimate face sheets showing the percentage of participation and the cost to the State and utility.

- c. Complete the description of work.
 - d. Sign and date the two estimate face sheets.
3. Review information for accuracy, complete the project information, sign and date the agreements and submit two original agreements to the Utility Section.
4.
 - a. Supervisor Utility Section shall review and sign two agreements. In the absence of the Supervisor, Utilities Section, the agreements are to be signed by the Right-of-Way Bureau Chief.
 - b. Distribution is as follows:
 - 1) Utility Section, one original agreement
 - 2) Utility company, one original and one copy of the agreement
 - 3) District, three copies
 - 4) Project Analysis, one copy of face sheet
5. The District will notify the utility company to proceed with work.
6. The face sheet of the agreement is the final bill. Within 60 days after the work is completed, the District Utility Agent should verify the completion of work by signing the face sheet (estimate sheet), and submit four copies of the face sheet with the pertinent documentation to the Utility Section for payment.

FAST PROCESS AGREEMENT NON-PROJECT RELATED

Safety of the traveling public and the elimination of potential utility hazards are the only reasons for relocating utilities by a *non-project fast process agreement*. Fast process agreements, non-project related, are initiated by the District and used when the District determines a need to adjust or relocate a utility where no active project exists. The justification by which a District may want to relocate a utility facility will vary, but should be documented in the files and must be safety related. For example; the District may determine a utility facility should be relocated because it obstructs sight distance, is a potential hazard, or must be relocated for a maintenance widening project. The relocation of utility facilities by this procedure will not replace or conflict with the program for the relocation of high hazard utility facilities, identified for relocation or adjustment by Safety Management.

The same requirements govern non-project related and project related Fast Process Agreements.

The agreement must be Lump Sum, Actual Cost or Unit Cost, unless otherwise approved, not to exceed \$50,000 State share. Bills should be submitted for payment by the District within 60 days after the work is completed.

PROCEDURES FOR APPROVAL

The approval procedure is identical for the fast process agreements project related with the following exceptions:

- 1) The District must submit a memorandum to the Utility Section either prior to or with the agreement package explaining the reason for the proposed utility relocation. The rationale should indicate the safety benefits the Department and traveling public will achieve from the relocation.
- 2) The nearest non-active construction project to the work area shall be used as a project designation along with the route, the milepost and county. However, use the applicable fast process agreement project number.

FAST PROCESS AGREEMENTS EXPLORATORY (P.E. Funded)

This agreement will be used when project designers and Utility Agents need exact depths to underground utilities to avoid potential conflicts. The agreement process can also be used during the utility plan in hand process when depths of underground utilities are needed to determine the extent of conflict with proposed construction.

The approval procedure is the same process as used for project related agreements.

Exploratory work (excavations) performed by a utility company is reimbursed 100% by the state.

The utility company should be encouraged to provide Unit cost estimate per excavation. The Utility Section and District should determine the number of excavations required. When additional excavations are required beyond those approved by the initial agreement, actual number of units for each excavation will be used.

When the Preconstruction Bureau needs to have elevations to utility facilities, the request should be directed to the District. The request should include the number of excavations, stations and distance left or right. The District will initiate the fast agreement.

This agreement cannot be used to determine depths of non-utilities such as cable television facilities.

FUNDING AND ACCOUNTABILITY FOR STATE-WIDE FAST PROCESS AGREEMENTS

Fast process agreements shall be processed for funding through the Project Analysis and Programming Engineer in the following manner:

State-wide accounts will be initiated for "fast process" agreements in the following categories:

National Highway System	NH 0002()
Surface Transportation Program	STPX 0002()
Safety Projects	STPHS 0002()
Interstate Project	IM 0002()

Other accounts may be initiated for specific programs.

GENERAL RULES:

- 1) Where an incidental construction program has been or will be initiated on a project, the fast agreement must be programmed and costs charged to the I.C. Account. On a specific project, all agreements must be charged to either the State-wide Fast Process Account or the I.C. Account.
- 2) If the utility work is non-project-related, the fast process utility agreement must be charged to the applicable annual state-wide "fast process" agreement project.
- 3) The Utilities Section is responsible for preparing an itemized summary of all State-wide Fast Process utility agreements.

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION
FAST PROCESS AGREEMENT

NOT TO EXCEED \$50,000 STATE'S SHARE

Active Project: (Project Related) _____ PE _____ IC _____ .. (Check One)

Designation: _____

In-Active Project: (Non-Project) _____

Designation: _____ Route: _____ Milepost: _____

County: _____

Utility Company: _____

Address: _____

AGREEMENT COSTS & FINAL BILL To Be Completed By Utility

Engineering Hrs. _____ X avg. rate incl. overhead _____ = \$ _____

Consultant Engineering Hrs. _____ X avg. rate incl. overhead _____ = \$ _____

Construction Labor Hrs. _____ X avg. rate incl. overhead _____ = \$ _____

Contractor Labor Hrs. _____ X avg. rate incl. overhead _____ = \$ _____

Material Unit cost Per Ft./ Pole _____ X units _____ = \$ _____

Equipment _____ = \$ _____

Miscellaneous _____ = \$ _____

Total Cost _____ = \$ _____

Description of work: _____

State % _____% State (Circle one) LUMP SUM / ACTUAL COST / Unit Cost _____ = \$ _____

Utility % _____% Utility (Circle one) LUMP SUM / ACTUAL COST / UNIT COST _____ = \$ _____

Exhibit and cost estimate must be attached.

When a public utility company claims a property interest and 100% participation by the state, the utility company certifies that documentation of the property interest is on file and will be furnished to the state upon request or has a prescriptive right, Utility Property Interest.

Utility Signature _____ Title _____

TO BE COMPLETED BY MONTANA DEPARTMENT OF TRANSPORTATION

Checked _____ Title _____ Date _____

Approved _____ District Administrator Date _____

Approved _____ Supervisor Utilities Section Date _____

Final bill to be submitted by District no later than *sixty (60) days* after completion of work.

I certify that the work represented by this agreement began _____
and was completed on _____.

Signed _____ Title _____ Date _____

NOTE: The first sheet of this agreement is the final bill. Submit four copies of this sheet, one sketch of the relocated facilities and four CB7's along with a separate coding sheet to the Utility Section for payment.

Charge this bill to account # _____.

The _____, hereinafter referred to as the "UTILITY," and the Montana Department of Transportation, hereinafter referred to as the "DEPARTMENT," hereby agree as follows:

1. That, due to the construction of this project or for safety considerations, adjustments of the existing UTILITY facilities will have to be made where the facilities now occupies the existing and/or proposed highway right-of-way. The utility will comply with the Code of Federal Regulations, Volume 23, Part 645 Subparts A and B, and subsequent amendments, Title 48 Code of Federal Regulations and also the laws of the State of Montana.

2. The DEPARTMENT'S obligation under this agreement shall be in accordance with all applicable State and Federal laws in existence on the date of execution of this agreement.

3. That UTILITY will make any necessary adjustments in its plant as required by the proposed construction or for safety considerations with its own forces, a continuing contractor, or by competitive bidding.

4. That if a contractor is used by a UTILITY the contract selection must awarded in accordance with practices followed by the UTILITY in the accomplishment of the UTILITY'S non-highway related work.

5. That this agreement is concluded on a Lump sum, Actual Cost or Unit Cost basis and in accordance with the Code of Federal Regulations, Volume 23, Part 645A and amendments thereto.

6. The DEPARTMENT reserves the right to terminate this agreement upon fifteen (15) days' written notice to the UTILITY. If the DEPARTMENT does terminate this agreement, it shall reimburse UTILITY for the DEPARTMENT'S share of all eligible costs the UTILITY has incurred under this agreement up to the date of the termination notice.

7. That all cost records of the UTILITY for this project will be subject to inspection at any time by representatives of the DEPARTMENT the legislative auditor and fiscal analyst and the Federal Highway Administration. All such records shall be retained for a period of not less than three years from the date of final payment.

8. No actual work is to be performed under this agreement until written authority to proceed is received from the respective District Administrator.

9. The state's share of the Project cost will be submitted for payment by the Department within 60 days after completion of work.

a. Utility Work Orders will be initiated by the District when it has been determined the cost will exceed 15% of State's share of the agreement. Written justification will be supplied by the Utility Company or District.

10. Work done on highway right-of-way must be approved by the District Administrator to insure that installation of the facilities will meet the "Standard Specifications for Road and Bridge Construction" and administrative rules 18.7.201 through 18.7.241.

11. Addendum "A" is attached and by this reference made a part of this agreement if the UTILITY is relocating underground facilities within existing or proposed highway right-of-way, STATE OF MONTANA.

Approved MDT Legal Council and Civil Rights Bureau

Attachment

WS:kap

NON-DISCRIMINATION NOTICE

During the performance of this Agreement, _____ (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued

pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, §49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR §26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The Party, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Party to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.